

OFFICIAL INFORMATIONCONFIDENTIAL**EVIDENCE CODE SECTION 1040
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: March 3, 2021

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: TACTICAL UNINTENTIONAL DISCHARGE 015-20 FOR 3/9/21 CLOSED-SESSION AGENDA

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
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Hollenbeck	4/27/2020	7:03 a.m.		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Hernandez, R./PO II	10 years, 8 months
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Total Involved Officer(s)

1 x Sgt. I

2 x PO II

<u>Suspects</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit ()</u>
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Does not apply.

COP Recommendations

Tactics – Administrative Disapproval, Officer Hernandez. Tactical Debrief, Officer Jimenez and Sergeant Guzman.

Drawing/Exhibiting – In Policy, No Further Action, Officers Hernandez and Jimenez, and Sergeant Guzman.

Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Officer Hernandez.

IG Recommendations

Tactics – Same as COP.

Drawing/Exhibiting – Same as COP.

Unintentional Discharge – Same as COP.

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INVESTIGATION

Annotated Force Investigation Division Incident Summary¹

On Monday, April 27, 2020, at approximately 0403:54 hours, ADT Security Services Operator contacted Communications Division (CD) to report an audible alarm activation at the Sears Department Store located at 2650 East Olympic Boulevard. The ADT operator informed CD that a Sears *key holder* named Francisco Medina was en route to the location.²

Note: The Sears Department Store consisted of two floors, that included areas designated for sales, warehouse storage and office space. The business was closed at the time of this incident.

At approximately 0407:31 hours, Communications Division (CD) broadcast on Hollenbeck Frequency, *"4A97, 4A97, Code 30 Ringer at the Sears, 2650 East Olympic Boulevard, Incident 594, RD 491."* Hollenbeck Patrol Division, uniformed Police Officers Il Jesus Cisneros, Serial No. 43206 and Kevin Delgado, Serial No. 43038, Unit 4A97, acknowledged the call and advised CD that they were Code Six.³

At approximately 0412:38 hours, Officers Cisneros and Delgado left the location prior to completing the call, to respond to a back-up request for a unit following armed robbery suspects in Hollenbeck Division.⁴ Officers Cisneros and Delgado spent the remainder of their shift assisting with the robbery investigation and were unable to handle the aforementioned radio call.

At approximately 0436:22 hours, Francisco Medina called 911 and advised CD that he observed an individual, later identified as Suspect Martin Santiago, inside the store.⁵ Medina observed the activity through the store window and described Santiago as a male Hispanic with a dark complexion, attired in a blue t-shirt and blue jeans. The CD operator directed Medina to stay inside his vehicle and advised him not to confront Santiago.

¹ The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

² Francisco Medina was the store manager of the Sears Department Store.

³ The radio call was non-coded.

⁴ They were not witness to the TACUD, nor were they significantly involved. Therefore, they were not interviewed by Force Investigation Division (FID) Investigators.

⁵ Martin Santiago, male Hispanic, five feet, six inches tall, 150 pounds, with a date of birth of November 2, 1981. Santiago was wearing a blue shirt, blue jeans and black shoes at the time of this incident.

At approximately 0438 hours, CD generated a new radio call for a burglary suspect there now based on the updated information provided by Medina. According to the comments of the call, this incident was not broadcast due to the pursuit in Hollenbeck Division.

At approximately 0526:25 hours, CD broadcast on Central Frequency, *"1A29, 1A29, in Hollenbeck, 459 Suspects, 2650 East Olympic, Code-Two, Incident 641, RD 491."*

Central Patrol Division, uniformed Police Officers II Nicholas Vincent, Serial No. 43555 and Mauro Garcia, Serial No. 42500, Unit 1A29 Watch 3, acknowledged the call and responded to the location Code Two.⁶ They arrived at scene at approximately 0545 hours and requested additional units for a building search. The store manager, Francisco Medina, unlocked front doors for the officers.

The following Central Patrol Division Watch 3 uniformed personnel responded to the additional unit request:

- Police Officer II Rodney Hernandez, Serial No. 40287 and Police Officer I Lehi Jimenez, Serial No. 43172, Unit 1X37.⁷
- Police Officer III Miguel Vaca, Serial No. 36025 and Police Officer I Joseph Bitonti, Serial No. 43999, Unit 1A1.
- Police Officer III Alisha Martinez, Serial No. 40689 and Police Officer I Eriz Lazaro, Serial No. 44063, Unit 1A41.
- Sergeant I Miguel Guzman, Serial No. 39443, Unit 1L50 (Investigators' Note No. 1).⁸

At approximately 0552 hours, Officers Hernandez and Jimenez arrived at scene. Upon exiting the vehicle, Officer Jimenez retrieved the shotgun.

The officers formed an entry/search team consisting of eight officers (Officers Vincent, Garcia, Hernandez, Jimenez, Vaca, Bitonti, Martinez, and Lazaro). Officer Jimenez was

⁶The radio call assigned to Officers Cisneros and Delgado was under Los Angeles Police Department (LAPD), Incident No. 20042700000594. The call assigned to Officers Vincent and Garcia was under Incident No. 20042700000641.

⁷ Officer Hernandez, 10 years, 8 months with the Department, 38 years of age, six feet, two inches tall, 250 pounds. Officer Hernandez was carrying a Department approved pistol, a TASER, a canister of Oleoresin Capsicum (OC) Spray, a Hobble Restraint Device (HRD), a Body Worn Video (BWV) camera affixed to the front of his uniform shirt and one pair of handcuffs on his person. Officer Hernandez's pistol had an attached Surefire Tactical Flashlight. Officer Hernandez's ballistic vest and Side Handle Baton were stored within his police vehicle.

⁸ Officers Vaca, Bitonti, Martinez, Lazaro, Vincent and Garcia were not witness to the TACUD; however, they did hear the gunshot. Therefore, Law Enforcement Heard Only Forms were completed for the aforementioned officers.

the point officer (shotgun) and Officer Lazaro brought a Beanbag Shotgun, which he slung over his shoulder. As they approached the storefront, all of the officers, with the exception of Officer Jimenez, unholstered their pistols. According to Officer Hernandez, he unholstered his pistol due to the fact burglary suspects are known to carry weapons, and to prevent this risk of serious bodily injury or death during the search.

Prior to entering the business, Officer Jimenez announced their presence, verbally identifying themselves as police officers. He ordered anyone inside the premises to come out with their hands up. After receiving no response, the officers entered the store and began a slow methodical search of the location.

At approximately 0615:15 hours, Sergeant Guzman arrived at scene and joined the search team near the lobby area of the store. After clearing the first floor, the officers made their way to the second floor of the building.

While searching the women's department, Officer Hernandez came across a closed door on the south side of the building. The signage on the door indicated that the room was an electrical closet. The door opened inward and had a metal handle affixed to the left side of the door. Officer Hernandez verbally advised the search team of his observation. Officers Jimenez and Sergeant Guzman heard the announcement and responded to Officer Hernandez's location.

As captured by BWV, Officer Hernandez held his pistol in his right hand, with the muzzle pointed toward the ground and positioned himself on the north side of the door. Officer Jimenez held the shotgun in a low-ready position and positioned himself on the south side of the door, while Sergeant Guzman remained in the store aisle, north of Officer Hernandez.⁹

Using his left hand, Officer Hernandez turned the door handle and pushed the unlocked door open. Once the door was open, it obscured the south/southwest corner of the room. As captured on BWV, the lighting within the room was rather dim; however, there was artificial lighting emitting from a hallway that was located in the northwest corner of the room.

Officer Jimenez entered the room first and positioned himself near the opening of the hallway. Officer Hernandez was concerned that the area behind the door had not been searched and directed Officer Jimenez to clear it. Officer Jimenez advised Officer Hernandez that there was hallway within the room.

According to Officer Hernandez, he was cognizant that Officer Jimenez was armed with a long gun (shotgun) and quickly realized it was not feasible for him to search the area behind the door, due to the limited space. Therefore, he decided to search that area

⁹ Gleaned from Sergeant Guzman's 1st BWV.

himself and directed Officer Jimenez to *stand by*.¹⁰ Officer Jimenez maintained his position at the hallway and held the shotgun in low-ready position, with the muzzle pointed in an easterly direction.

As Officer Hernandez entered the threshold of the room, he transitioned his pistol from his right hand into his left hand.¹¹ According to Officer Hernandez, “- - to adequately cover down in that area I’m going to search, I needed to have my weapon in my left hand.”¹² As captured by Sergeant Guzman’s BWV, Officer Hernandez grabbed the door handle with his right hand, looked behind the door, while simultaneously pointing his pistol in a southerly direction, behind the door.

According to Officer Hernandez, the area behind the door was dark; therefore, he decided to use the tactical flashlight affixed to his pistol to illuminate the area. Using his left index finger, he attempted to activate the flashlight engagement switch and heard a gunshot. At that time, Officer Hernandez realized he had an tactical unintentional discharge (TACUD).

The following image is a photograph of Officer Hernandez’s pistol, depicting the location of the flashlight engagement switch.

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¹⁰ Gleaned from Officer Hernandez’s 2nd BWV at approximately 0703:31 hours.

¹¹ According to Officer Hernandez, he is right hand dominant.

¹² Officer Hernandez’s statement, Page 28, Lines 23-25.



Note: Officer Hernandez did not recall placing his finger on the trigger and initially believed his pistol got caught on a portion of the door, causing the TACUD. Following the TACUD, Officer Hernandez can be heard on BWV stating, “*Oh, what the fuck, it snagged on the door.*”¹³

The following image was captured from Officer Hernandez’s BWV just prior to the TACUD. The image captures what appears to be Officer Hernandez’s left index finger on the trigger of his pistol.¹⁴

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¹³ Gleaned from Officer Hernandez’s 2nd BWV at approximately 0703:36 hours.

¹⁴ In order to improve the quality of Imagelink No. 1, FID investigators utilized the exposure tool on the program AMPED FIVE, to improve the overall brightness of the image.

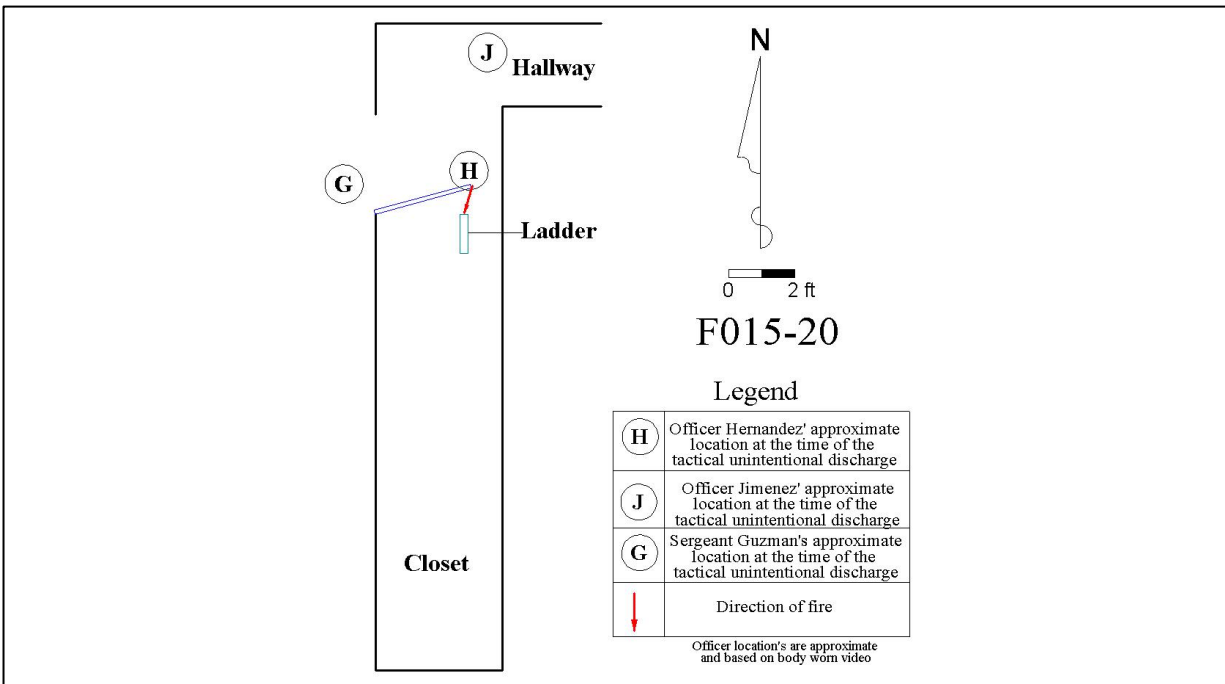


Officer Jimenez heard the gunshot; however, did not witness the TACUD occur. Officers Jimenez, Hernandez and Sergeant Guzman checked on one another and verified that no one was injured. Sergeant Guzman directed the officers to stop the search momentarily. Officer Hernandez transitioned his pistol back into his right hand and holstered his pistol.

Note: According to Sergeant Guzman, he initially believed the incident would be handled as a Non-Categorical Use of Force (NCUOF). Therefore, he did not immediately separate Officer Hernandez from the other officers.

The following diagram depicts the officers' approximate locations at the time of the TACUD, based on officer statements and video evidence.

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At approximately 0704:20 hours, Sergeant Guzman deactivated his BWV and telephonically notified the Central Patrol Division Watch Commander, Sergeant II James Sterling, Serial No 35950 of the TACUD.¹⁵ Sergeant Guzman requested an additional supervisor respond to his location. Sergeant Sterling directed Central Patrol Division, Sergeant I Andrew Kang, Serial No. 40447, Unit 1L70 Watch 2, to respond to the location.

After completing the telephonic notification, Sergeant Guzman reactivated his BWV and directed the remaining officers to continue with the building search.¹⁶ The search team completed their search; however, were unable to locate Santiago.

At approximately 0723:32 hours, Sergeant Kang arrived at the TACUD scene. Sergeant Guzman briefed him on the incident and directed him to the location of the TACUD.¹⁷

Initially, Sergeants Guzman and Kang were unaware that the incident was a Categorical Use of Force (CUOF).¹⁸ Therefore, Sergeant Kang began investigating the incident as

¹⁵ Just prior to Sergeant Guzman making the telephonic notification, his 2nd BWV captured the programmed contact as "Central Station" on his cellular phone at approximately 0704:21 hours.

¹⁶ Sergeant Guzman's BWV was reactivated at approximately 0705:07 hours.

¹⁷ Sergeant Kang's arrival time was gleaned from Officer Hernandez's 2nd BWV.

¹⁸ Sergeant Guzman promoted to the rank of Sergeant on February 17, 2019 and Sergeant Kang promoted on July 7, 2019.

a Non-Categorical Use of Force (NCUOF). At approximately 0730 hours, Sergeant Kang took photographs of the scene and associated evidence.¹⁹

At approximately 0734:15 hours, as captured on BWV, Officer Garcia observed a bullet fragment lying on the carpet west of the electrical room door.²⁰ Officer Garcia directed Officer Hernandez to the bullet fragment. Officer Hernandez bent over and used his flashlight to move the bullet fragment about an inch in an easterly direction.

According to Sergeant Kang, nearly an hour after he arrived at scene, he received a phone call from Sergeant Sterling. Sergeant Sterling advised him that the incident was a CUOF and directed him to obtain a Public Safety Statement (PSS) from Officer Hernandez. Sergeant Kang separated the officers and obtained a PSS from Officer Hernandez at approximately 0817 hours.²¹

No officers or civilians were injured during the incident.

At approximately 0736 hours, the Department Operations Center (DOC) was notified of the TACUD (Investigators' Note No. 2).

Note: The DOC Notification Log erroneously indicated that the time of occurrence was 0438 hours. The correct time of the TACUD was approximately 0703:34 hours.

The Central Patrol Division Watch Commander Log indicated that Sergeant Guzman notified Sergeant Sterling of the TACUD at approximately 0658 hours. However, BWV captured the notification being made at approximately 0704:48 hours.²²

Force Investigation Division (FID) Detectives III Kevin Huff, Serial No. 34099 and Nicholas Pikor, Serial No. 35384, as well as Detectives II Jose Robledo, Serial No. 34492, Joseph Vasquez, Serial No. 35412, Ubaldo Zesati, Serial No. 30078, Paul Bowser, Serial No. 35842, and John Macchiarella, Serial No. 35095, responded to the scene to conduct the investigation.

Detectives Bowser and Macchiarella conducted an examination of the area for evidence, including but not limited to, ballistic impacts, trajectories, and projectiles. A bullet impact was identified on a metal ladder that was stored within the electrical room, just south of the door. The bullet fragmented and struck the interior side of the door, an electrical pipe and a mannequin that was stored within the room. As a result of their

¹⁹ Gleaned from Officer Hernandez's 2nd BWV.

²⁰ Gleaned from Officer Hernandez's 2nd BWV.

²¹ The time of the PSS was gleaned from Sergeant Kang's Daily report.

²² The notification time was gleaned from Officer Hernandez's 2nd BWV.

examination, one expended cartridge case and 15 bullet fragments were recovered from the scene.

There was a total of six items of evidence booked in conjunction with the TACUD incident, under DR No. 2004-08257.

Technical Investigation Division (TID) Photographers III Gary Glade, Serial No. V9606, Harry Sarkisian, Serial No. N3442 and Marie Sallaberry, Serial No. N3637 responded to the scene. Photographs of the TACUD scene and associated evidence are stored under Control Nos. 0797552, 0797553, 0797555 and 0771104.

Sergeant Kang took 15 photos of the scene and associated evidence. Those photos were stored under Control No. 312298.

At approximately 1430 hours, while FID was conducting their investigation at scene, Martin Santiago was located in a makeshift room within the Department Store and was taken into custody without incident.²³ Santiago was placed under arrest for California Penal Code Section 459 – Commercial Burglary and subsequently booked at Metropolitan Detention Center under Booking No. 5922041.

Hollenbeck Patrol Division, Police Officers II Michael Malone, Serial No. 42698 and Dimaggio Rico, Serial No. 43508, Unit 4A97, completed an Arrest Report for Santiago, filed under Los Angeles Police Department (LAPD), DR No. 2004-08233.

Detective Robledo reviewed the documents regarding the separation, monitoring and admonitions not to discuss the incident prior to being interviewed by FID investigators. The investigation revealed that there were deviations from the standard protocol (Investigators' Note No. 3).

Force Investigation Division, Detective III Brandy Arzate, Serial No. 34394, verified that Officer Hernandez's .40 caliber Glock pistol was entered into the Firearm Inventory Tracking System (FITS) on August 1, 2009.

Forensic Science Division (FSD), Firearms Analysis Unit (FAU), Criminalist II Jacob Seror, Serial No. N4571, examined and test-fired Officer Hernandez's pistol. The pistol's measured trigger pull was within Department specifications.

Security cameras inside of the Sears Department Store captured Santiago inside of the business as well as officers searching the location; however, neither video capture the TACUD. Investigators obtained a copy of the security videos from Sears Video Technician, Lorenzo Bermudez. The videos are stored under Control Nos. 729471 and 759924.

²³ Santiago was apprehended inside of a makeshift room on the northwest corner of the Sears Department Store. It appeared that Santiago was living inside of the aforementioned room, as there was food, clothing and miscellaneous personal items stored within it.

Investigators' Notes

1. The investigation revealed that Officer Hernandez was not wearing his ballistic vest and did not have a Side Handle Baton and/or a collapsible baton on his person at the time of the incident. His ballistic vest and Side Handle Baton were both stored within his police vehicle.

According to Officer Hernandez, he removed his vest approximately three hours into his shift, because he was suffering from a rash. Officer Hernandez stated that he did not report the rash to a supervisor and did not consider donning the vest prior to responding to the building search.

2. Sergeant Sterling's Watch Commander's Log indicated the time of notification to the DOC as 0734 hours; however, the DOC Log indicated the time as 0736. Additionally, Sergeant Sterling noted that the reason for the delay in the notification to the DOC was due to the search being incomplete at the time of the incident.
3. The following discrepancies were identified upon review of the Central Patrol Division Watch Commander's Log and Sergeant's Daily reports:
 - The Watch Commander's Log indicated that the radio call was broadcast at 0438 hours. However, a review of Central Frequency determined that the call was broadcast and assigned to Officers Vincent and Garcia at approximately 0526:25 hours.
 - Sergeant Guzman's Daily Report indicated that he responded to radio call at 0415 hours; however, the call was not assigned to Officers Vincent and Garcia until approximately 0526:25 hours. Sergeant Guzman's log also erroneously depicted the location of occurrence as 601 East 9th Street.
 - The Watch Commander's Log indicated that at approximately 0703 hours, Sergeant Sterling directed Sergeant Kang to respond to the scene of an unintentional discharge and separate officers.

However, at approximately 0730:30 hours, Officer Hernandez's BWV captured Sergeant Kang inform Sergeant Guzman that he was directed to respond their location by Sergeant Sterling, but was not advised that the incident involved a use of force.

- The Watch Commander's Log and Sergeant Kang's Daily Report both indicated that he arrived at scene and separated Sergeant Guzman, Officer Hernandez and Officer Jimenez at 0705 hours. However, as captured by Officer Hernandez's BWV, he did not arrive at the TACUD scene at approximately 0723:32 hours.

Officer Hernandez's BWV remained on until 0744:52 hours. At no time did his video capture Sergeant Kang formally separate the officers and/or advise them not to discuss the incident prior to that time.

The following issues and concerns were identified regarding the separation and monitoring:

- Sergeant Guzman did not separate the officers at any time following the TACUD, nor did he admonish them not to discuss the incident.
- As captured by BWV, Sergeant Guzman discussed the incident with Officer Hernandez on multiple occasions. At approximately 0703:58 hours, Officer Vaca approached Officer Hernandez and briefly discussed the incident in Sergeant Guzman's presence.
- Following the TACUD, Officers Hernandez, Vaca and Sergeant Guzman walked around the TACUD scene and attempted to locate the cartridge case and impacts.
- At approximately 0709:50 hours, Sergeant Guzman made a second call to the Watch Commander. During that call, Sergeant Guzman discussed the circumstances of the incident while standing in close proximity to Officer Hernandez. The conversation was captured on Officer Hernandez's BWV.

This phone call was not documented on the Watch Commander's Log.

- Upon Sergeant Kang's arrival, Sergeant Guzman briefed him on the incident in the presence of Officers Hernandez and Jimenez. Sergeant Kang did not separate the officers at that time, nor did he admonish them not to discuss the incident.

Following the briefing, Sergeant Guzman directed Sergeant Kang to the TACUD scene and manipulated the door. Sergeants Guzman and Kang entered the TACUD scene and looked for impacts and/or evidence.

- Officer Hernandez's BWV captured him texting on his cellular phone while in the presence of Sergeants Kang and Guzman. Officer Hernandez covered his BWV camera with his hand as he did so.
 - At approximately 0738:00 hours, Officer Hernandez's BWV captured him discussing the incident with Sergeant Guzman, Sergeant Kang, Officer Jimenez and Officer Garcia.
4. Force Investigation Division investigators identified the BWVs of nine officers as being related to this incident. Three of the officers activated their BWVs twice,

resulting in a total of 12 BWVs. The BWVs of the nine officers mentioned in this administrative summary were reviewed in detail.

The investigation revealed that Officer Vaca's first BWV had a reduced buffer. As previously noted, Officer Vaca was not interviewed for this investigation.

These BWVs have been tagged in Evidence.com under Case No. F015-20 and remain available for review by the involved command.

On June 26, 2020, Force Investigation Group, Commanding Officer, Commander Timothy T. Nordquist, Serial No. 35492, informed the Director, Office of Operations, Assistant Chief Robert N. Arcos, of the above issues.

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CHIEF OF POLICE REPORT²⁴

Chief of Police Findings

Tactics – Administrative Disapproval, Officer Hernandez. Tactical Debrief, Officer Jimenez and Sergeant Guzman.

Drawing/Exhibiting – In Policy, No Further Action, Officers Hernandez and Jimenez, and Sergeant Guzman.

Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Officer Hernandez.

Chief of Police Analysis

Detention

Does not apply.

Tactics

- Department policy relative to a Tactical Debrief is: *“The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance”* (Los Angeles Police Department Manual, Volume 3, Section 792.05).

Department policy relative to Administrative Disapproval is: *“A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training”* (Los Angeles Police Department Manual, Volume 3, Section 792.05).

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Tactical De-Escalation

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

²⁴ The information provided in this section summarizes the analysis and findings set forth in the Chief of Police's report for this case.

Tactical De-Escalation Techniques

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- **Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)**

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

Planning – Officers Vincent and Garcia arrived at scene at approximately 0545 hours and requested additional units for a building search. Additional Central Patrol Division officers responded to the request for additional units for a building search. Upon arrival, the officers met with each other and formed an entry/search team consisting of Officers Vincent, Garcia, Hernandez, Jimenez, Vaca, Bitonti, Martinez, and Lazaro. Officer Jimenez was designated as the point officer armed with a shotgun and Officer Lazaro carried a beanbag shotgun, which he slung over his shoulder.

According to Officer Hernandez, the officers formulated a plan to make entry into the building. The team of officers designated an arrest team, less lethal force options, and contact and cover roles that could change based on the situation and layout of the property.

Sergeant Guzman arrived at scene and joined the search team near the lobby area of the store. According to Sergeant Guzman the officers formulated a search plan and believed the roles, jobs designated, and number of officers conducting the search was sufficient to safely clear the building. All the jobs were interchangeable depending on the size of the facility. Sergeant Guzman stated that the watch had conducted roll call training in building searches on the prior day to this incident.

Assessment – Officers Vincent and Garcia arrived at scene at approximately 0545 hours and requested additional units for a building search. Upon arrival, the officers met with each other and formed an entry/search team consisting of Officers Vincent, Garcia, Hernandez, Jimenez, Vaca, Bitonti, Martinez, and Lazaro. Prior to searching the building, the officers assessed the building and considered the size of the building and designated roles of each officer. An assessment was made on the involved personnel and a less lethal force option, in the form a beanbag shotgun, was added to the search team. According to Officer Hernandez, the officers formulated a plan to make entry into the building. During the search of the building, the officers continually assessed their surroundings and utilized appropriate tactics to clear the location of potential suspects.

Time – Officers Vincent and Garcia arrived at scene at approximately 0545 hours. They utilized their available time and met with the store manager, and then requested additional units for a building search. Additional Central Patrol Division officers responded to the request for additional units for a building search. Upon arrival, the officers took time to plan with each other and formed an entry/search team consisting of Officers Vincent, Garcia, Hernandez, Jimenez, Vaca, Bitonti, Martinez, and Lazaro. Prior to searching the building, the officers utilized their available time to assess the size of the building and designated roles of each officer. The investigation revealed the store manager unlocked the door for the officers. The officers conducted a slow and methodical search of a large, multi-level department store. The officers were searching the second floor when the TACUD occurred at approximately 0703 hours.²⁵

The UOFRB noted that the search of the large department store was slow and methodical. The officers involved in the building search did not rush, utilizing their available time, while conducting such a large-scale search. The UOFRB also noted that the officers had been searching the building for approximately one hour before the TACUD occurred, then continued the search after the involved officer was identified.

Redeployment and/or Containment – The investigation revealed that there were eight officers and one sergeant involved in the building search. Two additional officers remained outside of the building for containment. During the building search, Officer Hernandez came across a closed door in the women's department on the south side of the building. Officer Hernandez verbally advised the search team of his observation. Officers Jimenez and Sergeant Guzman heard the announcement and responded to Officer Hernandez's location. Officer Jimenez entered the room first and positioned himself near the opening of the hallway. Officer Hernandez was concerned that the area behind the door had not been searched and directed Officer Jimenez to clear it. Officer Jimenez advised Officer Hernandez that there was hallway within the room.

According to Officer Hernandez, he was cognizant that Officer Jimenez was armed with a shotgun and quickly realized that due to the limited space, it was not feasible for him to search the area behind the door; therefore, Officer Hernandez decided to redeploy and search that area himself and directed Officer Jimenez to stand by. Sergeant Guzman became involved in the search as a third person prior to Officer Hernandez entering through the closed door.

The UOFRB noted that the officers had containment of the building during the search and had an adequate number of personnel involved in the search. The UOFRB would have preferred that Sergeant Guzman not involve himself as part of the search team and instead continue to provide oversight and active leadership with

²⁵ According to the FID investigation, Officer Hernandez's 2nd BWV captured a statement which immediately followed the TACUD at approximately 0703:36 hours.

regards to command and control, as there was sufficient time to acquire additional personnel to redeploy and assist with clearing the room.

Other Resources – Officers Vincent and Garcia arrived at scene, which consisted of a department store, and requested additional units for a building search. Officers Vincent, Garcia, Hernandez, Jimenez, Vaca, Bitonti, Martinez, and Lazaro responded and formed an entry/search team. Officer Jimenez was designated as the point officer armed with a shotgun and Officer Lazaro carried a beanbag shotgun as a less lethal force option, which he slung over his shoulder.

Lines of Communication – Officers attempted to communicate with any possible persons inside of the building prior to making entry. Officer Jimenez announced the presence of the officers, verbally identifying them as police officers. He ordered anyone inside of the building to exit with their hand up in the air. After receiving no response to Officer Jimenez' orders, the officers entering into the location to clear the location.

Officers Vincent and Garcia arrived at scene and requested additional units for a building search. Additional Central Patrol Division officers responded to the request for additional units for a building search. According to Officer Hernandez, the team of officers continuously spoke about the tactical plan to clear the department store. During the building search in the women's department, Officer Hernandez came across a closed door on the south side of the building. Officer Hernandez verbally advised the search team of his observation. Officers Jimenez and Sergeant Guzman heard the announcement and responded to Officer Hernandez's location. The signage on the door indicated that the room was an electrical closet. Officer Jimenez entered the room first and positioned himself near the opening of the hallway. Officer Hernandez was concerned that the area behind the door had not been searched and communicated with Officer Jimenez to clear it. Officer Jimenez communicated with Officer Hernandez that there was hallway within the room. Officer Jimenez and Officer Hernandez continued to communicate with each other to search the location. Officer Hernandez communicated with Officer Jimenez to standby by while Officer Hernandez cleared the location behind the door.

Debriefing Points

- During the review of the incident, the following Debriefing Topics were noted:
- **Body Armor / Ballistic Vest** (Substantial Deviation, without justification – Officer Hernandez)

All sworn personnel shall wear Department approved body armor and an authorized police equipment belt when assigned to the field, geographic Area front desk or traffic Division front desk related duties (Los Angeles Police Department Manual, Volume 4, Section 216.52).

The FID investigation revealed that Officer Hernandez was not wearing his ballistic [sic] at the time of the incident. His ballistic vest was stored within his police vehicle.

Officer Hernandez was not wearing his ballistic vest during portions of his patrol shift as well as the tactical incident, which culminated in a tactical unintentional discharge. Officer Hernandez stated that prior to the building search, he had removed his ballistic vest during his patrol shift due to a rash. However, Officer Hernandez did not advise a supervisor of his medical issue or his decision to remove his ballistic vest.

The UOFRB considered that Officer Hernandez was not equipped with a ballistic vest as required during field operations. The UOFRB noted Officer's Hernandez's failure to wear his ballistic vest was a significant concern for concern and placed him at a tactical disadvantage.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that Officer Hernandez's failure to wear a ballistic vest was a substantial deviation, without justification, from Department policy and approved Department tactical training. The Chief directed that this issue be topics of discussion during the Tactical Debrief.

Note: The investigation also determined that Officer Hernandez was not equipped during the incident with a side handle or collapsible baton. It is the Department's expectation and policy that officers working a uniform assignment wear a ballistic vest and carry a side handle baton or collapsible baton. As a result, Central Area has initiated a personnel complaint for Officer Hernandez's failure to adhere to Department policy with regard to the wearing of body armor and being equipped with a baton, as required. The Commanding Officer of Operations – Central Bureau (OCB) and the Director of the Office of Operations (OO) concurred with this action.

- **Building Searches**

No matter what crime is involved, the size of the area to be searched, or the number of possible suspects, every search for suspects must be considered a high-risk activity and appropriate precautions taken.

High-risk searches of buildings or open areas must be carefully planned and executed. A strategic plan of operation should be flexible and include sufficient personnel to make adjustments and modifications as the situation unfolds. When conducting the search officers should use a systematic method of visually clearing or physically searching one area at a time before moving on to the next area (California Commission on Peace Officers Standards and Training, Learning Domain No. 23).

Sergeant Guzman, Officer Hernandez, and Officer Jimenez responded to a burglary radio call and joined the additional officers already on scene to form a search team and conduct a building search. During the subsequent investigation by FID personnel after the TACUD occurred, Santiago was located inside of the building.

The UOFRB noted that the search team members communicated with each other and proceeded to conduct a systematic and thorough search of the location. The UOFRB considered that the location was a Sears Department Store which was very large, consisted of two floors, and consisted of various tactical obstacles including numerous clothing racks and displays. The UOFRB considered that the officers effectively adapted their search tactics to the difficulties presented by the location. The UOFRB noted that Officer Hernandez clearly identified the closed electrical closet door to the search team, waited for his partner, and made entry into the room once Officer Jimenez and Sergeant Guzman were in a position to clear the room.

The UOFRB noted that the investigation revealed that hours after the TACUD had already occurred and as FID personnel were still conducting their investigation at scene, Santiago was located inside of a makeshift room within the department store. Santiago was taken into custody without incident. The UOFRB considered that the investigation determined that the makeshift room was not accessible without exiting out of a boarded-up wall of the location which led to a vacant area where the makeshift room was located. The UOFRB noted that the search team officers conducted a search of the area where the suspect was believed to have exited the building and it appeared to have been boarded up. The tactics utilized to search the department store appeared to be consistent with Department tactics and that the later location and arrest of Santiago by FID personnel did not appear to be related to any deficiencies of the search tactics.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that Sergeant Guzman's, Officer Hernandez's, and Officer Jimenez's actions were not a deviation from approved Department tactical training. In order to enhance future performance, the Chief directed that this be a topic of discussion during the Tactical Debrief.

Additional Tactical Debrief Topics

- **Supervisor Responsibilities** – The investigation revealed that Sergeant Guzman, while overseeing the search of the second floor of the building, repositioned himself to Officer Hernandez's location when Officer Hernandez announced he had a closed door that needed to be searched. Sergeant Guzman assumed the role of the third person in the search, as there were no other officers in the immediate vicinity to assist with the search of the room once Officers Hernandez and Jimenez gained entry and entered the room. Supervisors are reminded to, when feasible, prioritize and maintain command and control over becoming engaged in a tactical role. In order to enhance future performance, the Chief directed that this be a topic of discussion during the Tactical Debrief.

- **Preservation of Evidence** – The investigation revealed that following the TACUD, and after the remaining officers completed the building search, Officer Hernandez was directed to a bullet fragment located on the carpet west of the electrical room door. Officer Hernandez utilized his flashlight to move the bullet fragment approximately one inch in an easterly direction. Officer Hernandez is reminded evidence should be left in place until the arrival of FID investigators. If evidence must be moved, officers should don appropriate personal protective equipment to minimize altering or contaminating the evidence. To enhance future performance, the Chief directed that this be a topic of discussion during the Tactical Debrief.

Command and Control

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

Command and Control is a process where designated officers use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct officers and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).

Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).

Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide).

The investigation revealed Sergeant Guzman was the first supervisor to arrive at the scene. Sergeant Guzman joined the search team who had assembled near the

lobby of the store. Sergeant Guzman coordinated and provided oversight throughout the building search. As the search team cleared the second floor of the store, Sergeant Guzman responded to Officer Hernandez's declaration that he had a closed door that needed to be cleared and oversaw the entry into the room where the TACUD occurred. Sergeant Guzman momentarily stopped the search and determined that there were no injuries. Sergeant Guzman directed an additional member of the search team to assume Officer Jimenez's position and removed Officers Hernandez and Jimenez from the search. Sergeant Guzman directed the remaining uninvolved members of the search team to continue and complete the search of the store.

According to FID investigators, a review of Officer Hernandez's BWV depicted Sergeant Guzman make a phone call and inform the Central Patrol Division Watch Commander, Sergeant Sterling, that he was conducting a building search where an officer had an "accidental discharge."

According to Sergeant Guzman, during his conversation with Sergeant Sterling, he advised him of the TACUD and the circumstances of the incident. However, Sergeant Guzman did not recognize the TACUD as a CUOF incident and explained he was not familiar with the TACUD protocols. Sergeant Guzman believed the incident would be investigated as a NCUOF and therefore, did not admonish, separate, or continuously monitor the involved officers.

According to FID investigators, at 0705 hours, Sergeant Sterling broadcast, "1L90, have 1L70 respond to the Sears." The investigation revealed Sergeant Kang acknowledged the broadcast and responded to the scene of the TACUD. Upon his arrival, Sergeant Kang was briefed by Sergeant Guzman regarding the circumstances surrounding the TACUD incident. A review of Officer Hernandez's BWV depicted Sergeants Guzman and Kang discussing the protocols subsequent to a TACUD. Sergeant Kang explained he was not familiar with protocols subsequent to a TACUD. Sergeant Guzman advised Sergeant Kang that he believed the incident would be investigated similar to a NCUOF. Therefore, according to Sergeant Kang, he did not believe he needed to admonish, separate, or monitor the involved officers and began conducting his NCUOF investigation by attempting to locate evidence and obtaining photographs of the scene.

According to Sergeant Kang, approximately one hour after his arrival on scene he was notified by Sergeant Sterling that the incident would be handled as CUOF. Sergeant Sterling directed Sergeant Kang to administer a PSS to Officer Hernandez. Sergeant Kang admonished, separated, and monitored the involved personnel and administered a PSS to Officer Hernandez. Sergeant Kang continued to monitor Officer Hernandez and Sergeant Guzman until he was relieved by FID investigators.

The UOFRB noted that Sergeant Guzman took an active leadership role when he arrived as the building search was in progress and provided tactical oversight as expected throughout the remainder of the search. However, the UOFRB was critical

of the actions of Sergeant Guzman and Sergeant Kang with regards to the protocols subsequent to a CUOF. The UOFRB noted that Sergeants Guzman and Kang incorrectly identified the incident as a NCUOF and proceeded to conduct a NCUOF investigation. The UOFRB considered that TACUD's are not a common occurrence; however, they opined that Sergeants Guzman and Kang should have been familiar with their supervisory responsibilities following a TACUD incident. The UOFRB noted that upon being notified that the incident would be handled as a CUOF, Sergeant Kang immediately admonished, separated, and monitored the involved personnel in addition to administering a PSS to Officer Hernandez.

The UOFRB noted they would have preferred that Sergeants Guzman and Kang take a more active leadership role with regards to the urgency in identifying the incident as a CUOF, overseeing the separation and monitoring of those involved officers, and preserving the TACUD scene. The actions of Sergeants Guzman and Kang were not consistent with Department supervisory training and the Chief's expectations of field supervisors during a critical incident.

Force Investigation Division noted that there were multiple errors on the Watch Commander's Daily Report. According to the Watch Commander's Daily Report, Sergeant Sterling was notified of the TACUD and directed Sergeant Kang to respond to the scene of the TACUD. Sergeant Sterling noted that he directed Sergeant Kang to separate the officers.

The Chief would have preferred that Sergeant Sterling take a more active supervisory role upon being notified of a CUOF incident and provide clear direction to field supervisors. The UOFRB determined, and the Chief concurred, that while there were identified areas for improvement, Sergeant Sterling's actions with regard to protocols subsequent to a CUOF did not significantly deviate from approved Department supervisory training.

The actions of Sergeant Sterling were consistent with Department supervisory training and the Chief's expectations of a watch commander during a critical incident.

Tactical Debrief

- In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred, that the Officers Hernandez' actions were a substantial deviation, without justification, from Department policy and training, thus requiring a finding of Administrative Disapproval. Sergeant Guzman and Officer Jimenez's actions did not deviate from Department policy and training; therefore, the Chief directed they attend the Tactical Debrief.

Each tactical incident merits a comprehensive debriefing. In this case, there were areas identified where improvement could be made. A Tactical Debrief is the

appropriate forum for involved personnel to discuss individual actions that took place during this incident.

Although it was determined that Officers Vincent, Garcia, Vaca, Bitonti, Martinez, and Lazaro would not receive formal findings, the UOFRB determined, and the Chief concurred, that these officers would benefit from attending the Tactical Debrief to discuss the building search and incident in its entirety to enhance future performance.

Therefore, the Chief directed that Officers Hernandez, Jimenez, Vincent, Garcia, Vaca, Bitonti, Martinez, Lazaro, and Sergeant Guzman attend the Tactical Debrief and that the specific identified topics are discussed.

Note: Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

- On May 5, 2020, Officer Hernandez attended a General Training Update (GTU). All mandatory topics were covered, including the Force Option Simulator.

Drawing/Exhibiting

- Department policy relative to drawing and exhibiting a firearm is: *“An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified” (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).*
- **Officer Jimenez** – According to Officer Jimenez, after he and his partner arrived at the location to assist with a search for possible burglary suspects, he retrieved his Department shotgun from his police vehicle. Officer Jimenez deployed his Department shotgun based on the fact that he and his fellow officers were searching for an unknown number of burglary suspects who are known to have “weapons.” Officer Jimenez assumed the role of the “point man” in the building search based on his deployment of his Department shotgun, which was the most “firepower” he could utilize at the time.

Officer Jimenez recalled, *“At that point, it’s a 459 suspect, a suspect we don’t know at that point how many suspects in there. We don’t know if they’re still there or not...But - - but we’re always - - we always - - or 459s knows to be weapons. So at least we know so we we’re bringing at least the utmost firepower we have at that time because we don’t know how - - what kind of weapon they have...And at that time, that is like the most out - - most firepower weapons that we have.”*²⁶

*“So when we arrived at scene, I grabbed a shotgun and I held the open door. At that point, I already knew I’m going to be the point man as a shotgun guy.”*²⁷

- **Officer Hernandez** – According to Officer Hernandez, he responded to a request for additional units for a search for a possible burglary suspect. Officer Hernandez and his partner formed a search team with additional officers who responded to the incident. Officer Hernandez drew his service pistol at various times throughout the search based on the “potential dangers inside of the building” as well as his knowledge that burglary suspects are known to “carry weapons,” and his desire to ensure that he and his fellow officers were “safe from SBI or death.” Officer Hernandez advised he when he drew his service pistol, his service pistol was at a low ready position in his right hand. Officer Hernandez drew his service pistol prior to entering the closed door electrical closet due to the fact that he and his fellow officers were still “searching for a potential 459 suspect,” who he believed are known to have weapons. Officer Hernandez in this instance, drew his service pistol with his right hand and transitioned across his body to his support hand and down into a low ready position. Officer Hernandez stated that the angle in which the door opened obscured the southern portion of the closet.

Officer Hernandez recalled, *“There were - - whenever I was going to search a specific area, my weapon was unholstered due to the fact that there might be potential dangers inside of the building. 459 suspects are obviously known to carry weapons, and we obviously need to make sure that we are safe from SPR death. There were times where I was in the rear of a stick in more of a directive manner to where I would holster, because there would be no reason for me to have my weapon on. I would - - it - - it - - shoot one of my fellow officers potentially, so there’s times where I would holster.”*²⁸

*“Still, we are - - we are searching for a potential 459 suspect at the time -- which, as I stated earlier, may - - may have weapons that could...”*²⁹

²⁶ Officer Jimenez, Page 11, Lines 6-18.

²⁷ Officer Jimenez, Page 12, Lines 20-23.

²⁸ Officer Hernandez, 1st Interview, Page 16, Line 25 and Page 17, Lines 1-11.

²⁹ Officer Hernandez, 1st Interview, Page 21, Lines 19-20 and 22-23.

*"I'm - - I'm unholstered, sir... It's in my support hand, which is my - - my left."³⁰
"I transition to my left because of the - - the angle in the way the door opened - - to adequately cover down in that area I'm going to search, I needed to have my weapon in my left hand."³¹*

"I want to say that when I transitioned, I transitioned across my body and then down into a low ready."³²

"As we are making entry into a room, it's always going to be on low ready so we are able to see any threats that - - that may pop out and - - and you obviously want to get a better picture of the room that you're entering. So my muzzle is - - is usually facing on a low ready - - low ready position with my finger along the frame."

"The - - the duration of the - - this search was - - was always in my - - my - - my right hand other than the - - the incident with the discharge."³³

- **Sergeant Guzman** – According to Sergeant Guzman, he responded to the location of a possible burglary suspect and accompanied the team of officers as he oversaw the tactical strategies utilized during the search. As Sergeant Guzman and the team were searching the second floor of the location, he believed the due to the large area they needed to cover, it was advantageous to join the officers as "they were going to fan out side by side to clear together moving as one." Sergeant Guzman drew his service pistol to ensure his safety as well as his other fellow officers, based on the fact that he was conducting a search for a burglary suspect who are "known to carry weapons" which could be "used to cause serious bodily injury or death."

Sergeant Guzman recalled, "So myself - - and at that time that's when I - - I went ahead and unholstered to now - - instead of having eight officers, having a ninth person able to assist with this - - with having the safety of the officers that were conducting the search to the west, which was a shorter distance."³⁴

"The reason I unholstered is because we were there conducting a - - a burglary - - a burglary search for a burglary suspect. Burglary suspects are known to carry weapons to either pry open or open up, you know, these buildings. These weapons can be used to cause serious bodily injury or death. So at that time, to ensure the safety of myself and the other fellow officers, I unholstered my weapon."³⁵

³⁰ Officer Hernandez, 1st Interview, Page 28, Lines 6 and 9-10.

³¹ Officer Hernandez, 1st Interview, Page 28, Lines 20-21 and 23-25.

³² Officer Hernandez, 1st Interview, Page 30, Lines 2-4.

³³ Officer Hernandez, 1st Interview, Page 44, Lines 5-11.

³⁴ Sergeant Guzman, Page 20, Lines 1-6.

³⁵ Sergeant Guzman, Page 22, Lines 8-16.

*"The top portion. Once the six officers were going to go ahead and sweep the west side of the second floor - - I took the position that Officer Garcia had - - to ensure - - to give them an extra person because of the - - the distance, and they were going to fan out side by side to clear together moving as one."*³⁶

In this case, the UOFRB conducted a thorough review in evaluating the reasonableness of Officers Hernandez, Jimenez, and Sergeant Guzman's Drawing/Exhibiting of their service pistols and Department shotgun. The UOFRB noted that Officers Hernandez, Jimenez, and Sergeant Guzman responded to a burglary radio call at a large location. The UOFRB considered that Officers Hernandez, Jimenez, and Sergeant Guzman were cognizant that they were conducting a building search and each individual articulated in their own perspective that based on their training and experience, burglary suspects are known to utilize and be armed with various tools which could be used as weapons.

Based upon the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Hernandez, Jimenez, and Sergeant Guzman, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the Chief found Officers Hernandez, Jimenez, and Sergeant Guzman's Drawing/Exhibiting to be In-Policy, No Further Action.

Unintentional Discharge

- *Firearms safety is critical. Officers must have the ability to draw, holster and manipulate weapons safely at all times, especially under stressful conditions. Firearms safety rules have been established based upon real life situations and are applicable at all times. Violations of any of the safety rules will not be tolerated.*

Basic Firearm Safety Rules

1. *All guns are always loaded.*
2. *Never allow the muzzle to cover anything you are not willing to shoot.*
3. *Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
4. *Be sure of your target.*

Officers are required to know and apply the Four Basic Firearm Safety Rules throughout their careers. These rules must be ingrained into an officer's natural thought process and become second nature. Any violation of the Four Basic Firearm Safety Rules may result in the unintentional discharge of a round. This is a serious matter with the potential of having tragic results. For administrative purposes, the unintended discharge of a weapon is classified into two categories:

³⁶ Sergeant Guzman, Page 38, Lines 8-18.

1. *Accidental discharge: An unintended discharge of a firearm as a result of a mechanical malfunction of the firearm, not involving the shooter.*
 2. *Negligent discharge: An unintended discharge of a firearm as a result of a shooter not handling a weapon in a safe manner, violating one or more of the four basic firearm safety rules (Los Angeles Police Department Firearms Manual, July 2015).*
- *Administrative Disapproval - Negligent Discharge. Finding where it was determined that the unintentional discharge of a firearm resulted from operator error, such as the violation of a firearm safety rule (Los Angeles Police Department Manual, Volume 3, Section 792.05).*
 - **Officer Hernandez** – .40 caliber, one round discharged in a southerly direction.

Background – According to the FID investigation, one bullet impact was identified on a metal ladder that was stored within the electrical room, just south of the door. The FID investigation determined the background was the enclosed southern portion of the electrical room which contained an electrical pipe and a mannequin.

According to Officer Hernandez, he opened the door to the electrical closet which at which time Officer Jimenez entered the closet first moving in a northwesterly direction. Officer Hernandez observed that the door to the electrical closet stopped moving and obscured the southwest area of the closet. Officer Hernandez believed he needed to “clear this door, because my (Officer Hernandez) partner is already fully engaged in an area to where he has no cover.” Officer Hernandez moved in a “swift” manner due to the “potential threat behind the door.” Officer Hernandez transitioned his service pistol to his support hand in order to adequately cover the area behind the partially open door. Officer Hernandez while attempting to clear the area behind the partially open closet door, attempted to engage the tactical light that was affixed to his service pistol with his support hand while pulling the door open. Officer Hernandez during his attempt to activate his tactical light to illuminate the dark area behind the door, felt his “weapon have resistance” at which time Officer Hernandez’s finger entered the trigger guard of his service pistol and his service pistol discharged.

Note: According to the FID investigation, Officer Hernandez did not recall placing his finger onto the trigger and initially believed his pistol got caught on a portion of the door, causing the TACUD. Following the TACUD, Officer Hernandez can be heard on BWV stating, “Oh, what the fuck, it snagged on the door.”

Officer Hernandez recalled, “*Because of the way the door closed, I had to transition my weapon to my support hand so that I could adequately cover the - - the area that I was going to clear. When I - - when I approached the door, I attempted to open it. It didn’t feel as though it was moving. My weapon came - - from my recollection - -*”

*came to a point where I felt it was just past the door, but caught on the door latch. At the same time, I was simultaneously searching for my light that is affixed to the weapon. It's a SureFire. I'm not too sure of the model of the flashlight itself."*³⁷

*"However, it has two different mechanisms of engaging: One is a pressure, where you push towards the light, it's going to turn on and turn off based on pressure. The other mechanism is going to be a - - a - - a vertical movement up or down, which could be engaged from either side of my weapon. I was attempting to turn the flashlight on because of the darkness in the rear of the door. I felt that I was moving forward to - - to engage the light in addition to pulling the door open, and at that time the weapon had discharged. When it occurred, my belief was that it got caught on the latch from the door itself as I was pulling and - - and extending my hand towards the open area. However, viewing video, it may appear that that may not be the case. I'm not too sure that - - if my finger was on the trigger. However, it - - it does appear that there is a skin-like coloration in between the trigger guard, whether it be me - - you being able to see through the trigger and seeing my finger approaching the flashlight or on the - - in the trigger - - I'm not aware."*³⁸

*"My - - at the time my thought process was, 'I need to clear this door, because my partner is already fully engaged in a area to where he has no cover.' So my movements were a little swift, because I felt that there could be a potential threat behind the door, and I wanted to make sure that my partner, obviously, didn't get shot in the back. That being said, I have my perception of what occurred, and that's still what I feel occurred. However, viewing the video - - it appears that there is a potential for there to be - - me being the cause of the discharge. So once it discharged, I immediately indicated that I felt that the weapon was discharged by the latch on the door. I had said it out loud because I had a sergeant directly behind me, and I wanted to understand why there was a - - a discharge. I say within a split second - - I went - - my equilibrium was a little off because of the closed - - enclosed area that we - - the - - the shot was fired in. It was very loud, and a ringing came in my ear and almost deafening for several seconds."*³⁹

*"My recollection is when I was reaching - - when I was attempting to clear in passing the door - - frame, I was attempting to turn the light on, and I felt as if the - - the - - the weapon had resistance. At which time, obviously, the - - the discharge occurred."*⁴⁰

The UOFRB noted that Officer Hernandez transitioned his service pistol to his support hand in an effort to clear behind the electrical closet door which had become

³⁷ Officer Hernandez, 1st Interview, Page 11, Lines 9-20.

³⁸ Officer Hernandez, 1st Interview, Page 11, Lines 21-25 and Page 12, Lines 1-15.

³⁹ Officer Hernandez, 1st Interview, Page 12, Lines 23-25 and Page 13, Lines 1-17.

⁴⁰ Officer Hernandez, 1st Interview, Page 33, Lines 19-25 and Page 34, Lines 2-5.

caught on items located in the southern portion of the electrical closet. The UOFRB considered that Officer Hernandez stated he was attempting to activate his tactical light switch in an attempt to illuminate the southern portion of the electrical closet which had poor lighting. As Officer Hernandez attempted to activate his tactical light switch, his left index finger entered the trigger guard of his service pistol and his service pistol unintentionally discharged. The UOFRB opined that Officer Hernandez's attempt to manipulate his tactical light switch with his support hand contributed to his unintentional discharge.

Based on the totality of the circumstances, the UOFRB determined and the Chief concurred, that the TACUD was the result of operator error and a failure to adhere to the Department's Basic Firearm Safety Rules, thus requiring a finding of Administrative Disapproval (AD), Negligent Discharge.

Additional/Equipment

Body Worn Video

Sworn Employee	Serial No.	Issue	Priors	Final Disposition
M. Vaca	36025	Reduced Buffer	0	CC

Body Worn Video – Audit

Sworn Employee	Serial No.	BWV Audit Type	Date Range	Result	Compliance Rate
M. Vaca	36025	Full Buffer	1/12/21-2/11/21	8 out of 8	100%

Required Equipment

Sworn Employee	Serial No.	Issue	Final Disposition
R. Hernandez	40287	No Side Handle Baton	Directed Training

Protocols Subsequent to a Categorical Use of Force/Preservation of Evidence

Sworn Employee	Serial No.	Issue	Final Disposition
R. Hernandez	40287	Discussed TACUD with personnel prior to FID interview. Moved evidence.	Directed Training

M. Guzman	39443	Did not recognize TACUD as CUOF incident. Did not separate or admonish officers at conclusion of TACUD, allowing them to speak about the incident and use cell phone. Did not secure TACUD scene. Discussed TACUD in front of personnel prior to FID interview. Discrepancy in Daily Supervisor Log.	1.28
A. Kang	40447	Did not recognize TACUD as CUOF incident. Did not separate or admonish involved officers and allowed officers to use cell phone. Discussed TACUD in front of officers. Canvassed the scene of CUOF incident prior to FID arrival.	1.28
J. Sterling	35950	Time discrepancies in Watch Commander's Daily Report. Delayed DOC notification.	Directed Training CC
M. Vaca	36025	Discussed TACUD with involved officers. Canvassed scene of TACUD prior to FID arrival.	Directed Training CC
M. Garcia	42500	Discussed TACUD with involved officers.	Directed Training CC
L. Jimenez	43172	Discussed TACUD with involved officers.	Directed Training CC

Audio/Video Recordings

Digital In-Car Video System (DICVS) / Body Worn Video (BWV) – All responding Central Patrol Division police vehicles were equipped with DICVS. Force Investigation Division detectives reviewed the DICVS of the responding units and determined they did not capture the search or the TACUD.

Body Worn Video (BWV) – All responding Central Patrol Division personnel were equipped with BWVs and activated them during the incident. Force Investigation

Division investigators identified the BWVs of nine officers as being related to this incident. The BWVs of the nine officers mentioned in this administrative summary were reviewed in detail. The BWV of Sergeant Guzman and Officer Hernandez captured the TACUD.

Outside Videos – Security cameras inside of the Sears Department Store captured Santiago inside of the business as well as officers searching the location; however, neither video captured the TACUD. Investigators obtained a copy of the security videos from a Sears Video Technician. Each of these videos were reviewed in detail and stored at TID Electronics Section for future reference.

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INSPECTOR GENERAL REVIEW

Inspector General Analysis

Investigation Quality

- No significant issues of concern were identified in relation to investigation quality.

Training Issues

- No significant issues of concern were identified in relation to training.

Equipment Issues

- No significant issues of concern were identified in relation to equipment.

Detention

- Does not apply.

Tactical De-escalation

- The involved officers were conducting a building search for a possible burglary suspect, but they did not encounter any suspects prior to the TACUD. As such, the officers had minimal opportunity to implement de-escalation techniques prior to the TACUD. Following the TACUD, however, the officers' actions were consistent with the Department's de-escalation training.

BWV and DICVS Policy Compliance

SERIAL	NAME	TIMELY BWV ACTIVATION	FULL 2- MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
39443	Guzman, M.	Yes	Yes	Yes	N/A	N/A
40287	Hernandez, R.	Yes	Yes	Yes	N/A	N/A
36025	Vaca, M.	Yes	No	Yes	N/A	N/A
43172	Jimenez, L.	Yes	Yes	Yes	N/A	N/A

Inspector General Recommendations

Tactics

- The OIG concurs with the Chief's findings.

Drawing/Exhibiting

- The OIG concurs with the Chief's findings.

Unintentional Discharge

- The OIG concurs with the Chief's findings.

A handwritten signature in black ink, appearing to read "M. P. Smith". The signature is fluid and cursive, with the first name "M." followed by a period and the last name "Smith" in a stylized script.

MARK P. SMITH
Inspector General